

APPEAL NO. 022813  
FILED DECEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 2, 2002. At issue was whether the Texas Workers' Compensation Commission (Commission) can order the respondent (carrier) to pay attorney fees to the appellant (claimant's attorney) in the amount of \$556.79. The hearing officer determined that (1) the carrier improperly and without legal authority failed to withhold claimant's attorney fees in the amount of \$556.79 from the claimant's "recovery"; (2) the Commission orders to pay attorney fees to the claimant's attorney do not constitute a claim against the carrier; and (3) there being no further claimant's "recovery" to serve as a source of payment for claimant's attorney fees, there is no authority for the Commission to order payment of these fees from carrier assets. The claimant's attorney appeals the determination asserting legal error. No response was filed.

DECISION

Affirmed.

The facts in this case are undisputed. The claimant received a 10% impairment rating for his compensable injury and received impairment income benefits (IIBs) payments from February 5, 2002, through September 3, 2002. On May 3, 2002, the Commission approved attorney fees under sequence numbers 3, 4, and 5, in the total amount of \$1,420.00, for services provided from October 16, 2001, through March 25, 2002. The parties stipulated that the claimant's attorney's fees were reasonable and necessary. The total attorney fees approved would not have been paid by the time IIBs payments were completed, had 25% of each IIBs check been deducted for attorney fees. The claimant's attorney agreed that only \$728.11 was payable from the claimant's recovery. The carrier did not deduct attorney fees from IIBs payments until August 8, 2002, when four payments were made in the total amount of \$171.32. The claimant's attorney now seeks an order that the balance of \$556.79 be paid from the carrier's own assets.

The claimant's attorney argues that the carrier should be held liable for the unpaid attorney fees because it failed to deduct such fees from IIBs payments made between May 3, 2002, and August 8, 2002, as required by Commission rules. The claimant's attorney cites no authority in support of his position that the carrier should be held directly liable for the claimant's attorney fees in this instance, nor are we aware of any such authority. Indeed, the law is clear that a claimant's attorney fees "shall be paid from the claimant's recovery," except in limited instances regarding supplemental income benefits and judicial review. Section 408.221(b). The 1989 Act provides no express authority for fee shifting, in this instance; nor do Commission rules, which provide that the claimant's attorney fees "become a lien against any unpaid income benefits." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(c) (Rule 152.1(c)); and

see Preamble at 19 TexReg 2547 (April 18, 1994). Because there is no further recovery from which payments may be withheld, the Commission has no authority to order the carrier to pay claimant's attorney fees in the amount of \$556.79.

The claimant's attorney argues that the carrier should be held liable for his attorney fees as a matter of policy and/or equity, because to hold otherwise would allow carrier's to neglect their legal responsibilities in similar instances without the fear of legal recourse. We note that a carrier's willful or intentional violation of a Commission rule may give rise to administrative penalties under Section 415.002. Additionally, we view the effect of this decision as requiring claimant's attorneys to be diligent in pursuing reasonable and necessary attorney fees. Nonetheless, in the absence of clear authority in the 1989 Act and applicable rules, we do not order the carrier to pay the claimant's attorney fees.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for Paula Insurance Company, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR  
9120 BURNET ROAD  
AUSTIN, TEXAS 78758.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge